

Publicly-supported organization; large contribution. A large inter vivos gift of undeveloped land from a disinterested donor to a normally publicly supported organization exempt under section 501(c)(3) of the Code, conditioned on the land's being used in perpetuity to further the exempt organization's purposes of preserving natural resources, constitutes an unusual grant and will not adversely affect the status of the organization as a publicly supported organization under section 170(b)(1)(A)(vi).

Advice has been requested whether, under the circumstances set out below, a gift of undeveloped land to an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 constitutes an unusual grant for purposes of determining whether the organization qualifies as a section 170(b)(1)(A)(vi) organization.

The gift in question was made by an otherwise disinterested party, and would, by reason of its size, adversely affect the status of the organization as normally being publicly supported.

Neither the donor nor any person whose relationship to the donor is described in section 4946(a)(1)(C) through (G) of the Code created the organization, previously contributed a substantial part of the organization's support or endowment, or stands in a position of authority with respect to the organization.

The gift was made inter vivos, with the only condition placed on the gift being that the land be used in perpetuity to further the purposes set out in the organization's charter. The gift is to be used in furtherance of the organization's exempt purpose, which is to preserve the natural resources of the town in which the organization is located.

During the five years of its existence, the organization has carried on an active program of public solicitation and exempt activities. It has shown a steady increase in the number of its contributors.

The organization has received a previous gift of undeveloped land which was held to be an unusual grant by the Internal Revenue Service. However, the organization's operating expenses are primarily paid for through public support within the meaning of section 1.170A-9(e) of the Income Tax Regulations.

The organization has a representative governing body as described in section 1.590(a)-3(d)(3)(i) of the regulations.

Section 1.170A-9(e)(6)(ii) of the regulations provides that for purposes of determining whether the percent-of-support test in section 1.170A-9(e)(2) or section 1.170A-9(e)(3)(i) of the regulations is satisfied, one or more contributions may be

excluded from both the numerator and the denominator of the applicable percent-of-support fraction if such contributions meet the requirements of section 1.170A-9(e)(6)(iii). This exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

(a) are attracted by reason of the publicly supported nature of the organization; (b) are unusual or unexpected with respect to the amount thereof; and (c) would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

Section 1.170A-9(e)(6)(iii) of the regulations provides that in determining whether a particular contribution may be excluded under section 1.170A-9(e)(6)(ii) all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Factors similar to the factors to be considered are found in section 1.509(a)-3(c)(4).

Section 1.509(a)-3(c)(4) of the regulations lists nine factors to be considered as follows:

(1) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through (G) of the Code) who created the organization, previously contributed a substantial part or its support or endowment, or stood in a position of authority with respect to the organization.

(2) Whether the contribution was a bequest or an inter vivos transfer. A bequest will normally be given more favorable consideration than an inter vivos transfer.

(3) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization.

(4) Whether the organization has carried on an actual program of public solicitation and exempt activities, and has been able to attract a significant amount of public support.

(5) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public.

(6) Whether the organization previously maintained its status as normally being publicly supported without the benefit of any exclusions.

(7) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) of the Code continues directly or indirectly to exercise control over the organization.

(8) Whether the organization has a representative governing body as described in section 1.509(a)-3(d)(3)(i) of the regulations.

(9) Whether material restrictions or conditions have been imposed by the transferor upon the transferee in connection with such transfer.

The gift in this case meets the general criteria of section 1.170A-9(e)(6)(ii) of the regulations. It also satisfies the facts and circumstances test under section 1.170-9(e)(6)(iii), although not all the factors listed in section 1.509(a)-3(c)(4) are present.

Of particular importance in this case are the facts that: (1) the donor was a disinterested party; (2) the organization's operating expenses are paid for primarily through public support; (3) the gift of undeveloped land furthered the exempt purpose of the organization; and (4) this contribution is in the nature of new endowment funds because the organization is relatively new.

Accordingly, considering all the pertinent facts and circumstances, the contribution in this case qualifies as an unusual grant for purposes of determining whether the organization qualifies as a section 170(b)(1)(A)(vi) organization.